IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.476 of 1992

Decided on : 12th September, 2007

State of H.P. **…Appellant.**

Versus

Im Singh **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the respondent : Mr. N.K. Thakur, Advocate.

Surjit Singh, Judge(Oral)

Respondent was sent up for trial for an offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, for allegedly being in possession of 1.400 Kgs. of Charas, while travelling by a bus bound for Pathankot coming from Chamba side which was intercepted at a place called Tunuhatti.

2. As per prosecution version, Incharge, Police Post Post, Tunuhatti, namely PW-13 Chuni Lal, received a secret information that a man traveling by the bus, in question, was carrying Charas. The bus reached the barrier near the Police Post, Tunuhatti around 12.20 p.m. It was got stopped and checking was done. Appellant was found in possession of 1.400 Kgs of Charas.

3. Trial Court has acquitted the respondent holding that the independent witnesses associated in the case are stock witnesses as

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Whether reporters of the local papers may be allowed to see the judgment?

they had been associated by the police earlier also in 5-6 cases of similar nature and no efforts had been made to associate any other witness.

4. We have heard the learned Additional Advocate General. Admittedly, the Head Constable Chuni Lal (PW-13) received the secret information about two hours before the bus reached the barrier. He was supposed to have recorded this information into writing if he wanted to search the bus and the passengers, in view of the provision contained in Section 42 of the Narcotic Drugs and Psychotropic Substances Act. It is conceded by the leaned Additional Advocate General that this information was not reduced into writing. That means, the provision of Section 42 of the Narcotic Drugs and Psychotropic Substances Act had been given a complete goby.

5. It has been held by the Apex Court in ***State of Punjab*** Vs. ***Baldev Singh***, *(1999) 6 SCC 172* that the provision of Section 42 of the Narcotic Drugs and Psychotropic Substances Act is mandatory and its non-compliance entitles the accused to acquittal.

6. On account of the non-compliance of the aforesaid mandatory provision of law, we feel that there is absolutely no scope for interference in the judgment of acquittal recorded by the trial Court. Hence, the appeal is dismissed.

(Surjit Singh), J

September 12, 2007(ss) **(Surinder Singh), J**